IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.193 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA Sd/-
and
HON'BLE MS.JUSTICE H.N.DEVANI Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME-TAX

Versus

SAURASHTRA CEMENT & CHEMICAL INDUSTRIES LTD.

Appearance:

MR MANISH R BHATT for Petitioner No. 1

..... for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 12/01/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. The Income Tax Appellate Tribunal Ahmedabad Bench 'C' has referred the following question for the opinion of this Court under Section 256(1) of the Income-tax Act,

1961 (the Act) at the instance of the Commissioner of Income-tax, Gujarat Central, Ahmedabad :

"Whether, the Appellate Tribunal is right in law and on facts in holding that the assessment made in this case for the year under consideration was barred by limitation and hence was required to be annulled ?"

2. The Assessment Year is 1981-82. The assessee, a public limited company, was assessed under Section 143(3) read with Section 144-B of the Act vide assessment order dated 01-09-1984. The said order was served on the assessee on 12-09-1984. The assessee carried the matter in appeal before the CIT (Appeals). By way of an additional ground the assessee challenged the assessment order as being barred by limitation. However, the CIT (Appeals), for the reasons stated in his order dated 28-09-1987, did not admit the additional ground of appeal.

3. The assessee carried the matter in appeal before the Tribunal. The Tribunal permitted the assessee to urge the aspect of limitation as the same was based on interpretation of provisions of the Act and the necessary facts were available on record.

4. The case of the assessee is that by an order dated 29-08-1983 the CIT, Central, Ahmedabad passed an order under Section 125A(1) of the Act directing that all the powers and functions assigned to the Income Tax Officer, Central Circle, Jamnagar would be available to the Inspecting Assistant Commissioner, Central Range-II, Ahmedabad, who shall exercise concurrent jurisdiction. That the said order took effect from 01-09-1983. The submission on behalf of the assessee was that despite the aforesaid order under Section 125A(1) of the Act, the Income Tax Officer, Central Circle, Jamnagar forwarded draft assessment order in case of the assessee to Inspecting Assistant Commissioner, Central Range-II, Ahmedabad on 13-03-1984. The Inspecting Assistant Commissioner issued instructions under Section 144-B of the Act on 31-08-1984 and thereupon the Income Tax Officer, Central Circle, Jamnagar framed assessment on 01-09-1984 under Section 143(3) read with Section 144-B of the Act. According to the assessee, the assessment was thus barred by limitation in light of provisions of Section 153(1)(a)(iii) of the Act. The Tribunal upheld the contention and held that assessment was barred by limitation and annulled the assessment. It is this order of the Tribunal which is under challenge.

5. Mr.B.B.Naik, learned Standing Counsel for the applicant - Revenue, invited attention to provisions of Section 125-A, 144-B and Section 153 of the Act and reiterated submissions made before the Tribunal by the Revenue. Though served, there is no appearance on behalf of the respondent - assessee.

6. Section 125A(4) of the Act reads as under :

"[(4) Where an order is made under sub-section (1) and the Inspecting Assistant Commissioner exercises the powers or performs the functions of an Income-tax Officer in relation to any area, or persons or classes of persons, or incomes or classes of income, or cases or classes of cases, references in this Act or in any rule made thereunder to the Income-tax Officer shall be construed as references to the Inspecting Assistant Commissioner and any provision of this Act requiring approval or sanction of the Inspecting Assistant Commissioner shall not apply.]"

Section 144-B(7) of the Act reads as under :

"(7) Nothing in this section shall apply to a case where an Inspecting Assistant Commissioner exercises the powers or performs the functions of an Income-tax Officer in pursuance of an order made under section 125 or section 125A."

Section 153(1)(a)(iii) of the Act reads as under

"153.(1) No order of assessment shall be made under section 143 or section 144 at any time after--

(a) the expiry of --

(i) x x x x

(ii) x x x x

(iii) two years from the end of the assessment year in which the income was first assessable, where such assessment year is an assessment year commencing on or after the 1st day of April, 1969; or "

7. On a plain reading of the provisions it is

apparent that once an order is made by the Commissioner under Section 125A(1) of the Act vesting the Inspecting Assistant Commissioner with powers and functions conferred on and assigned to an Income Tax Officer all such powers and functions shall be exercised or performed concurrently by the Inspecting Assistant Commissioner. The fact that the CIT, Central had made an order under Section 125A(1) of the Act on 29-08-1983 directing the Inspecting Assistant Commissioner, Central Range-II, Ahmedabad to exercise concurrent jurisdiction with the Income Tax Officer, Central Circle, Jamangar is an admitted fact. The consequence of such an order is provided in sub-section (4) of Section 125A of the Act. The said sub-section provides that all references in the Act or the Rules thereunder to the Income Tax Officer shall be construed as references to the Inspecting Assistant Commissioner. However, what is more material is that any provision of the Act requiring approval or sanction of the Inspecting Assistant Commissioner shall not apply in cases where the Inspecting Assistant Commissioner is vested with concurrent jurisdiction.

8. Similarly, Section 144B(7) of the Act specifically provides that nothing in the preceding sub-sections of Section 144B shall apply to a case wherein an Inspecting Assistant Commissioner exercises the powers or performs the functions in pursuance of an order made under Section 125A(1) of the Act. Under sub-section (1) of Section 144B of the Act it is provided that where the Income Tax Officer proposes to make any variation in the income returned which is prejudicial to the assessee and the amount of such variation exceeds the prescribed amount i.e. Rs.1 lac, the Income Tax Officer shall forward a draft of the proposed order of assessment to the assessee. Sub-sections (2) and (3) of Section 144B of the Act provide for filing of objections to the proposed variation by an assessee. Under sub-section (4) of Section 144B of the Act the Income Tax Officer is required to forward the draft order together with the objections received from an assessee to the Inspecting Assistant Commissioner, and the Inspecting Assistant Commissioner is bound to issue directions for the guidance of the Income Tax Officer to enable the Income Tax Officer to complete the assessment after considering the draft order and the objections. Therefore, the scheme visualizes two different authorities : the Income Tax officer and the Inspecting Assistant Commissioner, wherein the former is subordinate to the latter. However, in a case where the Inspecting Assistant Commissioner is empowered to exercise concurrent jurisdiction, there is no requirement of forwarding a

draft assessment order and obtaining approval or sanction.

9. Section 153 of the Act provides for time limit for completion of assessment. No order of assessment can be made under Section 143 or Section 144 of the Act at any time after the expiry of two years from the end of the assessment year in which the income is first assessable, where assessment year is commencing on or after 1st April, 1969 as provided under Section 153(1)(a)(iii) of the Act. Only exception that can be carved out for the purposes of extending this period of limitation is available under Explanation 1 (iv) to Section 153 of the Act wherein it is provided that the period commencing from the date on which the draft assessment order is forwarded by the Income Tax Officer and ending with the date, on which the Income Tax Officer receives the directions from the Inspecting Assistant Commissioner, shall be excluded, but such exclusion shall not exceed 180 days. However, in light of the fact that the Inspecting Assistant Commissioner was required to exercise concurrent jurisdiction provisions of Section 144B(7) of the Act read with Section 125A(4) of the Act would not require any forwarding of draft assessment order and seeking approval or sanction of the Inspecting Assistant Commissioner. As a natural corollary the extended period of limitation prescribed under Explanation 1(iv) to Section 153 of the Act cannot be available to the assessing authority.

10. Hence, taking into consideration the aforesaid scheme of the Act, it becomes apparent that the Income Tax Officer, Central Circle, Jamnagar was not required to forward any draft order to the Inspecting Assistant Commissioner, Central Range-II, who was invested with concurrent jurisdiction by order made under Section 125A(1) of the Act. Therefore, the Inspecting Assistant Commissioner and the Income Tax Officer were not entitled to take recourse to the extended period of limitation. The normal period of limitation would expire on 31-03-1984 in light of the fact that the Assessment Year is 1981-82. The assessment order has admittedly been framed on 01-09-1984 and hence is barred by limitation. In the circumstances, there is no infirmity in the impugned order of the Tribunal.

12. The question referred for the opinion of this Court is, therefore, answered in the affirmative i.e. in favour of the assessee and against the Revenue. The reference stands disposed of accordingly. There shall be no order as to costs.

Sd/- Sd/-

[D.A.MEHTA,J] [H.N.DEVANI,J]

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